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20/11/07

HIGH COURT OF CHHATTISGARH AT BILASPUR
Criminal Appeal No. 260/2003

APPELLANT

Nand Kumar

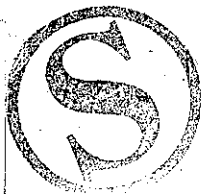
Vs.

RESPONDENT

State of Chhattisgarh

Judgment post for 17-11-2007

Sd/-
DHIRENDRA MISHRA
Judge



29

1

HIGH COURT OF CHHATTISGARH AT BILASPUR
Criminal Appeal No. 260/2003

APPELLANT

Nand Kumar, S/o Sitaram Sahu, aged about 37 years, R/o village - Charoda, Police Station - Kurud, Distt. Dhamtari (CG)

Vs.

RESPONDENT

State of Chhattisgarh

PRESENT: Shri Shailendra Dubey, Advocate for the appellant.
Shri Neeraj Mehta, Panel Lawyer for the State.

JUDGMENT
(17-11-2007)

Bharendra Mishra, J

This criminal appeal is directed against the judgment of conviction and order of sentence dated 20th December, 2002 passed in S.T. No. 288/2002 whereby learned Additional Sessions Judge, Dhamtari has convicted the appellant under Section 376(1) and 506 part II of I.P.C. and sentenced him to undergo R.I. for 10 years and to pay a fine of Rs. 1000/-, in default of payment of fine, to undergo additional R.I. for 6 months and to undergo R.I. for 3 years, to pay a fine of Rs. 500/- and in default of payment of fine, to further undergo additional R.I. for 3 months respectively. Both the sentences have been directed to run concurrently.

2. Case of the prosecution in brief is that the prosecutrix resides in village Chataud with her parents, brothers and sisters. On 28-4-2002, P.W. 6 the prosecutrix was sleeping in verandah with her sister when around 11.00 p.m. her father Nand Kumar woke her up and committed rape with her after undressing her. In the morning she narrated the incident to her mother Mongra Bai (P.W. 8), however when she enquired from her husband, he threatened her also and out of shame, the incident was not disclosed by them to the villagers. On 5-5-2002, around 9.30 p.m. when she was sleeping in her room after closing the door, accused tried to enter in her room by removing the ceiling (Patav), however the prosecutrix woke up and told her mother. The accused reached there also and asked the prosecutrix to sleep with him and on refusal, he threatened her as a result of which the prosecutrix went to her maternal-grand-mother's house in the night itself and narrated the incident to her also. A meeting of

Panchas was convened in the village. In the said meeting, the appellant admitted his guilt and thereafter the report was lodged.

3. The prosecutrix was sent for medical examination to Main Hospital, Dhamtari where Dr. Smt. Asha Tripathi (P.W. 13) examined her and gave her report of Ex. P-10A. After completing investigation, charge sheet was filed in the Court of Judicial magistrate First Class, Dhamtari and the same was received on transfer for trial by learned Additional Sessions Judge.

4. During trial, the prosecution examined 14 witnesses in all and thereafter statement of the accused was recorded in which he denied the evidence appearing against him in the prosecution case and stated that he has been implicated in a false case out of animosity and he has specifically pleaded that he has not committed rape with the prosecutrix. In fact, he used to reprimand the prosecutrix for watching TV. He used to stop Mongra Bai from going to her parental house and therefore they are all falsely implicating him. Since he has encroached 1 ½ decimal of Government land and Panchayat people were insisting that he should remove the encroachment and, therefore, they are falsely implicating him. However, the trial Court after hearing the counsel for the parties, has convicted and sentenced the appellant as mentioned in para 1 of the judgment.

5. Learned counsel for the appellant submits that the version of the prosecutrix is full of discrepancies. The case of the prosecution based on the report of the prosecutrix is that the alleged offence was committed by him around 11.00 p.m. however, the prosecutrix in her cross-examination has stated that the incident occurred at 4.00 a.m. at the time when the appellant and his wife used to wake up normally and thus there is serious discrepancy in her statement with respect to the time which creates doubt about the veracity of the version of the prosecutrix. Referring to the statement of Dr. (Mrs.) Asha Tripathi (P.W. 13), it was argued that the doctor did not find any external injury over the person of the prosecutrix. Her secondary characters were well developed. There was no injury on her private part and her hymen was intact and she has categorically stated that she cannot give definite opinion regarding commission of rape. On further query this witness has clarified that since she did not find any injury over the private part of the prosecutrix or over any part of



her body and had found the hymen of the prosecutrix intact, therefore, she opined that partial penetration might have taken place but it was not possible to definitely opine that the rape was committed or not. Referring to para 11 of her cross-examination, it was argued that this witness has further stated that looking to the age of the prosecutrix, if forcible penetration of male organ is made in her private part, hymen could rupture and inflammation, reddishness and swelling could be present. Referring to the statement of P.W. 8, it has been argued that commission of rape as alleged by the prosecutrix is highly improbable as the prosecutrix has not stated that she suffered pain at the time of commission of the offence and her mother has also admitted that she did not hear cries of the prosecutrix at the time of commission of offence. So far as extra judicial confession before P.W. 5 Siteshwar and P.W. 9 Ramkishun is concerned, witness Siteshwar in para 6 of his statement has only stated that the elders of the village gathered in Panchayat Bhawan, Nand Kumar was also summoned and on being interrogated, he confessed his guilt and thereafter it was advised to lodge report. This witness nowhere states that he admitted that he committed rape with the prosecutrix. Similarly P.W. 9 Ramkishun is Kotwar of the village who has also claimed in para 4 that the appellant confessed having committed rape with his daughter and asked to settle the matter in the village itself, however diary statement of this witness was not recorded during investigation and he made this statement for the first time before the Court as he was called by the prosecution to prove entry in the Kotwari register.

6. On the other hand, learned counsel for the State has supported the impugned judgment.

7. I have heard the learned counsel for the parties. I have perused the impugned judgment as also the evidence available on record.

8. Conviction of the appellant is based on the statement of the prosecutrix (P.W. 6), Sukhwari (P.W. 7), Siteshwar (P.W. 5), Ramkishun (P.W. 9) and Mongra Bai (P.W. 8).

9. The prosecutrix has categorically stated in her deposition that the appellant woke her up in the night and forcibly raped her after undressing her. She narrated the incident in the morning to her mother Mongrabai. In the next week on 5-5-200 also, when she was

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sleeping in her room and when she saw that the appellant was removing the ceiling of her room to enter in her room whereupon she went to her mother, however the appellant also reached there and beat her and asked her to sleep with him and on her refusal went to bring weapon and at that juncture, she went to her maternal-grand-mothers' house and narrated the incident to her and the maternal uncle Hiteshwar.

10. It is true that this witness has admitted that her father used to stop her from going outside to watch TV and used to beat her brutally and she has also stated that the incident occurred at 4.00 a.m. however merely on the ground of discrepancy of time in her statement, her version regarding commission of rape and indecent advancement in the next week cannot be suspected, particularly taking into consideration that the allegation is being made by the daughter against her father. It is also true that the lady doctor deposed that on examination, she found hymen of the prosecutrix intact and did not see any visible internal or external injury over the person of the prosecutrix, however for committing rape complete penetration is not the requirement of law and even partial penetration is sufficient to constitute the offence of rape defined under Section 375 of I.P.C. Absence of inflammation, swelling or reddishness over the private part of the prosecutrix is irrelevant as the prosecutrix was examined by the doctor on 7th May, 2002 i.e. almost 10 days after the commission of the offence and, therefore, no visible sign of the offence could be noticed after such a long delay. Version of the prosecutrix is duly corroborated from the statement of Mongra Bai (P.W. 9) who is none other than the wife of the appellant and Sukhwati (P.W. 7), mother-in-law of the appellant and both of these witnesses have corroborated the prosecutrix in material particulars. Case of the prosecution is further established from the statement of P.W. 5 Sitieshwar and Ramkishun (P.W. 9) as both of them have stated that in the meeting of the elders, the accused was called who admitted his guilt and who requested to settle the matter in the village itself and not to lodge the report. The argument of the appellant in this regard that it refers only this much that he admitted his guilt and it does not refer that the appellant admitted that he committed rape, is concerned, it is only a corroboratory evidence to



33

the version of the prosecutrix and other witnesses and it is viewed in the context of the statement of the prosecutrix.

11. The defence of the appellant that he used to reprimand the prosecutrix for going to the house of others for watching TV and therefore, she has falsely implicated him in a false case of rape and that he stopped his wife from visiting her parental home and, therefore, she is making false allegation of rape against him cannot be accepted as no daughter and wife would implicate their own father and husband in such a heinous crime of committing rape with his own daughter for such a trivial reason. Similarly the Panchayat people are stating against him as he has made encroachment in the government land, is also not acceptable for the same reason.

12. In the result, the conviction of the appellant under Section 376(1) and 506 Part II of I.P.C. and sentence imposed under those sections are based on proper appreciation of evidence available on record and the same do not call for any interference.

13. The appeal being devoid of substance deserves to be dismissed and it is accordingly dismissed.

Sd/-
DHIRENDRA MISHRA
Judge